

STATE OF MICHIGAN
COURT OF APPEALS

In re NORFLEET/WINBUSH-BEY/NEWTON-
BEY/NORFLEET-BEY, Minors.

UNPUBLISHED
May 12, 2015

Nos. 323110; 323116
Macomb Circuit Court
Family Division
LC Nos. 2013-000397-NA;
2013-000398-NA;
2013-000399-NA;
2013-000400-NA;
2013-000401-NA;
2013-000402-NA

Before: RIORDAN, P.J., and JANSEN and HOOD, JJ.

PER CURIAM.

In these consolidated appeals, respondent K. Norfleet (“respondent-mother”) and respondent A. Winbush-Bey (“respondent-father”) appeal as of right the trial court’s order terminating their parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(i), (b)(ii), (j), and (k)(v).¹ We affirm.

A child protective proceeding involving the family was previously brought in Wayne County in 2012 after the second youngest child, BN, suffered a fractured femur and a hematoma to her ear that neither respondent was able to explain. The children were returned to respondent-mother’s custody in April 2013, and respondent-mother relocated to Macomb County. Respondent-father lived separately from the family, but helped care for the children on weekends.

In October 2013, a new petition was filed in Macomb County after BN was taken to the hospital with a severe subdural hematoma. Respondent-mother offered different explanations for

¹ Contrary to what respondents assert, the trial court did not rely on §§ 19b(3)(c)(i) or (c)(ii) as additional grounds for termination. Indeed, those subsections apply only where “182 or more days have elapsed since the issuance of an initial dispositional order.” Because the trial court terminated respondents’ parental rights at the initial dispositional hearing, §§ 19b(3)(c)(i) and (c)(ii) were not applicable as a matter of law.

the injury. Surgical intervention was necessary to evacuate blood that had built up on the child's brain. According to doctors, the child would have died without the surgery. Although doctors could not determine the specific cause of the injury, they agreed that the nature and severity of the injury was inconsistent with an accidental cause, and that the injury most likely resulted from an intentional act of abuse, which could have been inflicted up to seven days before BN was treated at the hospital. During surgery, doctors discovered an apparent separate layer of blood, which suggested that the child had experienced a prior head trauma injury. Doctors also observed other scars and marks on BN's body in the shape of loops, which was indicative of past abuse. After the other children were removed from the home, it was discovered that several of them also had scars and marks on their bodies that were consistent with abuse. Some of the children reported being "whooped" by both respondents, including with a belt and hanger.

I. STATUTORY GROUNDS

Both respondents argue that the trial court erred in finding that grounds for termination were established under MCL 712A.19b(3)(b)(i), (b)(ii), (j), and (k)(v). A petitioner is required to establish a statutory ground for termination by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). Only one statutory ground for termination is required. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). We review the trial court's factual findings, as well as its ultimate decision whether a statutory ground for termination has been established, for clear error. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). A finding is clearly erroneous when, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *Id.* Deference is given to the trial court's assessment of the credibility of the witnesses. *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991).

MCL 712A.19b(3)(b)(i), (b)(ii), (j), and (k)(v) permit termination of parental rights under the following circumstances:

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

(ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

* * *

(k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following:

* * *

(v) Life-threatening injury

The evidence clearly established that BN sustained a life-threatening head injury. She required immediate surgery to drain fluid buildup on her brain to reduce intracranial pressure. Doctors testified that the child would have died without the surgery. Both respondents argue that termination of parental rights was inappropriate because the evidence failed to show that BN's injury was caused by an act of abuse, and further, there was no evidence indicating who was responsible for any act of abuse. We disagree.

Although the medical experts were not certain what caused BN's injury, they agreed that the nature and severity of the injury was not consistent with an accidental cause or with any of respondent-mother's varying explanations, and that the most likely cause of the injury was an intentional act of child abuse. Furthermore, although the perpetrator of the abuse was never clearly identified, the evidence indicated that BN was in the sole custody of respondent-mother during the period of time that the injury could have been inflicted, except for a span of a few hours when respondent-father had custody of the child three or four days before the child was treated at the hospital. However, there was also clear evidence that BN and the other children had been victims of past abuse. Medical findings suggested that BN had a separate subdural hematoma stemming from a prior head injury, and that BN and the other children had several scars and marks consistent with prior acts of abuse. In addition, the children reported that both respondents had "whooped" them, sometimes with a belt or hanger.

In *In re Ellis*, 294 Mich App 30, 35-36; 817 NW2d 111 (2011), this Court held "that termination of parental rights under MCL 712A.19b(3)(b)(i), (b)(ii), (j), and (k)(iii) is permissible even in the absence of definitive evidence regarding the identity of the perpetrator when the evidence does show that the respondent or respondents must have either caused or failed to prevent the child's injuries." The timeline of BN's head injury and other evidence more strongly pointed to respondent-mother as the perpetrator of the injury, but it also left open the possibility that the injury was inflicted during the brief period in which BN was in the care of respondent-father and that her symptoms did not manifest themselves until later. Even though the evidence did not definitively identify the perpetrator of the injury, it indicated that the injury was caused by one of the respondents. Further, in light of the evidence that BN had previously suffered other unexplained injuries, that several of the other children had visible scars and marks consistent with abuse, and that the children reported being hit and "whooped" by both respondents, the evidence supported a finding that each respondent, to the extent that he or she did not directly cause BN's injury, was aware of ongoing abuse and failed to intervene to prevent the injury. In addition, considering that BN was seriously injured after respondents had received services in a prior case in Wayne County, and the evidence of the past injuries to BN and the other children, there was a reasonable likelihood that the children would suffer from injury or abuse in the foreseeable future if returned to respondents' custody.

Accordingly, the trial court did not clearly err in finding that termination of the parental rights of both respondents was justified under § 19b(3)(b)(i) or (b)(ii), (j), and (k)(v).

II. BEST INTERESTS

Both respondents also argue that the trial court erred in finding that termination of their parental rights was in the children's best interests. We again disagree. In *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009), this Court explained:

Under MCL 712A.19b(5), as amended by 2008 PA 199, effective July 11, 2008, once the court finds that a statutory ground for termination has been established, it shall order termination of parental rights if it finds "that termination of parental rights is in the child's best interests[.]" We review the trial court's best interests decision for clear error. MCR 3.977(J) [now MCR 3.977(K)]; *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003).

Whether termination of parental rights is in a child's best interests is to be determined by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). In deciding whether termination of parental rights is in a child's best interests, a court may consider the child's bond to the parent, the parent's parenting abilities, and the child's need for permanency, stability, and finality. *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). The court may also consider the advantages of an alternative home for the child in its evaluation of the child's best interests. *In re Foster*, 285 Mich App 630, 634-635; 776 NW2d 415 (2009).

The evidence showed that the children were abused while in respondents' custody and entered foster care with significant behavioral or emotional problems. According to Dr. Ryan, who evaluated respondents and the children, respondent-mother was dealing with her own personal difficulties and had been overwhelmed caring for the six children. She would require at least two years of intensive therapy to address her own issues. Respondent-father had never been a full-time caregiver for the children. Neither respondent was in a position to meet the children's many special needs. While the older children seemed to have a bond with respondent-mother, it did not appear to be a healthy one. None of the children expressed having a strong bond with respondent-father. Moreover, respondent-father acknowledged that he did not want to be a parent to his children, and instead preferred to be their playmate or friend. The trial court did not clearly err in finding that termination of respondents' parental rights was in the children's best interests.

Affirmed.

/s/ Michael J. Riordan
/s/ Kathleen Jansen
/s/ Karen M. Fort Hood